47 So. 942, 944. There is no inconsistency in the remedies which the plaintiffs here are pursuing. It is true that in suing Beilin they acknowledge that he has title. But this does not necessarily involve an admission that the defendants' delivery in violation of instructions was not a breach of duty. *Cf. Pacific Vinegar & Pickle Works* v. *Smith*, 152 Cal. 507, 93 Pac. 85; *Robinson Machine Works* v. *Vorse*, 52 Iowa, 207, 2 N. W. 1108. An erroneous application of the doctrine of election is particularly to be regretted, because the doctrine, at best, is a sacrifice of justice to technical perfection. See Charles P. Hine, "Election of Remedies, A Criticism," 26 HARV. L. REV. 707.

EMINENT DOMAIN — POWER OF ONE STATE TO CONDEMN LAND IN ANOTHER. — The plaintiff was a Wisconsin corporation supplying the defendant city in Wisconsin with water. A small but highly important part of its plant was land and an intake main in Minnesota, in which state, however, it performed no public service. Its franchises were held under a Wisconsin statute which gave to any municipality the right to acquire by condemnation any such public utility. The plaintiff sues to enjoin such condemnation proceedings by the defendant in so far as they relate to the property in Minnesota. *Held*, that a demurrer to the complaint be sustained. *Superior Water, etc. Co.* v. *City of Superior*, 183 N. W. 254 (Wis.).

It is true that the United States may condemn land within a state. *Kohl* v. *United States*, 91 U. S. 367. But no state can condemn property in another state. *Crosby* v. *Hanover*, 36 N. H. 404. See NICHOLS, EMINENT DOMAIN, 2 ed., § 28. Nor could Minnesota have allowed the defendant to take the property involved in this case by eminent domain. for a state may not authorize condemnation for purposes which do not substantially benefit its own public interest and welfare. *Grover Irr. & Land Co.* v. *Lovella Ditch, etc. Co.*, 21 Wyo. 204, 131 Pac. 43. *Cf. Gilmer* v. *Lime Point*, 18 Cal. 229; *Trombley* v. *Humphrey*, 23 Mich. 471; *Petition of United States*, 96 N. Y. 227. See Charles N. Gregory, "Expropriation by International Arbitration," 21 HARV. L. REV. 23, 26–27. Under the above authorities, the first ground of decision in the principal case is clearly wrong. It is argued that the property devoted to the franchise is merged in it, is personalty, and therefore is subject to the jurisdiction of Wisconsin. It may be that the whole plant and franchise is properly taxable as a unit and as personalty. *Town of Washburn* v. *Washburn Waterworks Co.*, 120 Wis. 575, 98 N. W. 539. And even that the foreign land may be included for this purpose. *Cf. Vanuxem's Estate*, 212 Pa. St. 315, 61 Atl. 876. But such a fiction is flagrantly abused if by means of it a court claims jurisdiction to operate *in rem* on land in another state. See *Lynde* v. *Columbus, etc. Ry. Co.*, 57 Fed. 993 (Circ. Ct., D. Ind.). If the principal case can be supported, it must be on the second ground of the court's decision: that the acceptance of the franchise under the statute gave rise to a specifically enforceable contract to convey in aid of condemnation proceedings all property devoted to the franchise.

EQUITY — SPECIFIC PERFORMANCE — FRAUD OF A THIRD PARTY AS A DEFENSE. — Through the fraudulent representations of the defendants' agent as to collateral facts, the defendants were induced to agree to sell land to the plaintiff for less than its then market value. The plaintiff was wholly innocent. But the defendants notified him as soon as they discovered the fraud, and tendered him back the sum already paid on account. This the plaintiff refused and brought this bill for specific performance. *Held*, that the bill be dismissed. *Levin* v. *Atchison*, 69 PITTS. L. J. 385.

There is little direct authority upon the point, although the holding of the case has been predicted by an eminent author. See FRY, SPECIFIC PERFORMANCE, 4 ed., §§ 728, 729. A contract cannot be set aside for the fraud

of a third party. *Publishers* v. *Wilks*, 105 Ark. 243, 151 S. W. 280; *Martin* v. *Campbell*, 120 Mass. 126. *Cf. Root* v. *Bancroft*, 8 Gray (Mass.), 619. But misconduct of the plaintiff may cause denial of specific performance where rescission would not be allowed. *Kelly* v. *Central Pacific R. Co.*, 74 Cal. 557, 16 Pac. 386; *Allen* v. *Kirk*, 219 Pa. St. 574, 69 Atl. 50. The mistake of the defendant here was not, however, induced by the plaintiff. The cases of unilateral mistake coupled with hardship upon the defendant show that specific performance may be denied where the plaintiff's only moral obliquity arises after the contract and consists in then ignoring the appeal of the defendant's situation. See 3 WILLISTON, CONTRACTS, §§ 1425, 1427. But the terms of the contract in the principal case were not sufficiently harsh to be within the rule of these cases. *Day* v. *Wells*, 30 Beav. 220. If right, therefore, the case must rest on some additional ground. It may be significant that the plaintiff is seeking to take advantage of a tort. *Cf. Dixon* v. *Olmius*, 1 Cox Eq. 414; *Luttrell* v. *Olmius*, 11 Ves. Jr. 638 (*cit.*). But see *Dye* v. *Parker*, 194 Pac. 640, 195 Pac. 599 (Kans.). The defendant's mistake would be impaired as a defense if caused by his own negligence. *Tamplin* v. *James*, 15 Ch. D. 215. The probability that it was so caused is diminished by the fraud as the moving cause. Also a shade is cast upon the plaintiff's morality, and the weight of both these elements may just turn the balance of discretion, but certainly with no great preponderance.

EVIDENCE — PRIVILEGED COMMUNICATIONS — STATEMENTS TO A PROSECUTING ATTORNEY. — The defendant was convicted of statutory rape. At the trial, for the purpose of impeaching the testimony of the prosecuting witness, he offered in evidence her statements to the county attorney to the effect that the defendant had not assaulted her. This evidence was excluded. *Held*, that the exclusion was erroneous. *entoamore* v. *State*, 181 N. W. 182 (Neb.).

The basis of privilege is confidence. See 4 WIGMORE, EVIDENCE, § 2285. There is a social interest that clients receive confidential advice from their attorneys without the menace of revelation upon the stand. See 1 TAYLOR, EVIDENCE, 11 ed., § 911. See Brougham, L. C., in *Greenough* v. *Gaskell*, 1 Myl. & K. 98, 103. There is a social interest in an administration of criminal law unembarrassed by the possibility that citizens, who pursuant to duty and in good faith inform the prosecuting attorney of crime, will be held liable for their accusations. *Gabriel* v. *McMullin*, 127 Ia. 426, 103 N. W. 355; *Vogel* v. *Gruaz*, 110 U. S. 311. See 4 WIGMORE, EVIDENCE, § 2374; NEWELL, SLANDER AND LIBEL, 3 ed., §§ 596–597. In both cases, to foster confidence, public policy raises the shield of privilege. But in neither case is the privilege indefeasible. The communications of a client seeking advice for a fraudulent purpose may be exposed in court. See HEGEMAN, PRIVILEGED COMMUNICATIONS, §§ 77–81; 1 TAYLOR, EVIDENCE, 11 ed., § 912. Information given by a citizen to a prosecuting officer in furtherance of a conspiracy to commit an indictable offence is subject to disclosure. *State* v. *Wilcox*, 90 Kan. 80, 132 Pac. 982. A balance of interests determines the decision of such cases. Lord Esher well said that when two public policies conflict, the one which says that the innocent man shall not be condemned when his innocence can be proved must prevail. See *Marks* v. *Beyfus*, 25 Q. B. D. 494, 498. In the principal case the evidence excluded was material to the proof of innocence. In such instance — especially where no liability devolves upon the informant by admitting the evidence — the privilege must give way. See *Riggins* v. *State*, 125 Md. 165, 93 Atl. 437, *accord*.

EVIDENCE — *RES GESTA* — STATEMENTS OF BYSTANDER. — In a trial for murder, the defendant pleaded self-defense. A witness for the defendant testi-